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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 18, 2001

APPLICATION OF

CINCAP-MARTINSVILLE, LLC

CASE NO. PUE010169

For a certificate of public
convenience and necessity for
electric generation facilities
in the City of Martinsville

ORDER FOR NOTICE AND HEARING

On March 27, 2001, as supplemented on May 10, 2001, CinCap-Martinsville, LLC ("CinCap" or "Company"), applied for a certificate of public convenience and necessity authorizing construction and operation of electric generation facilities in the City of Martinsville. CinCap proposes to build the facilities in the Commerce Court Industrial Park at the end of Commerce Court Drive. The location is described in the public notice prescribed in ordering paragraph (17) of this Order.

The proposed facilities would consist of four simple-cycle combustion turbines with total net generation capacity of approximately 330 megawatts. The facilities would use natural gas as fuel.¹ According to the application, construction would

¹ CinCap identified three options for supplying natural gas to the facility. The first option would require replacement of approximately 21 miles of existing pipeline serving the proposed location of the generating facilities with a larger pipeline that would connect to Transcontinental Gas Pipeline Corporation's existing interstate pipeline. As a second option, Transcontinental Gas Pipeline Corporation would construct a new lateral line from the existing pipeline to the site of the generation facility. Under the

begin in the Fall of 2002, and commercial operation would begin in June 2003. The facilities would interconnect with existing transmission facilities of Appalachian Power Company d/b/a American Electric Power.

CinCap applied for a certificate under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 of the Code of Virginia. According to the Company, the facilities would operate as a merchant plant exclusively in the wholesale market for electric power. In addition to a certificate, CinCap requested that the Commission, as authorized by § 56-265.2 B of the Code, exempt the facilities from the ratemaking and other regulatory requirements of Chapter 10 (§ 56-232 et seq.) of Title 56 the Code.

The Company expressly sought a waiver of, or exemption from, § 56-234.3 of Chapter 10, which requires Commission approval before an electric utility makes financial commitments or expenditures for new generation facilities of 100 megawatts capacity or larger. In support of this request, CinCap stated in its application that its project requires expenditures for site preparation and permitting before the Commission will take

third option, Duke Energy would construct a lateral line from a pipeline it might construct near Martinsville. Only the application for authorization to construct and operate the generation facilities is now before the Commission. Neither CinCap nor any other company has filed with the State Corporation Commission an application for authority to construct a pipeline or lateral, which would serve the proposed generation facilities. The Commission makes no determination of its jurisdiction over any pipeline or lateral line that may be proposed in the future to serve the CinCap facility.

final action. The Company would undertake these activities at its risk.

Finally, CinCap requested a waiver of the Commission's Information Requirements in Support of Petitions for Independent Power Facilities, 20 VAC 5-320-10, which requires applicants to give the Commission 30 days' notice of an application.

The Commission finds that, as provided by §§ 56-265.2, 56-580 D, and related provisions of Title 56 of the Code, this matter should be docketed. While CinCap offered no reason for not complying with our requirement set out in 20 VAC 5-320-10 to give the Commission advance notice of an application, the Commission will grant the waiver. The advance notice requirement is intended to alert the Commission and permit allocation of resources so as to expedite processing once the application is filed.

With regard to § 56-234.3 of the Code, the Commission will consider whether a waiver should be granted to the construction approval requirement. Any waiver granted would be interim pending entry of a final order in which we determine whether the facilities should be exempted from the requirements of Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code. We will establish procedures for addressing this issue. The grant or denial of an interim waiver of the construction approval requirement will not determine whether the Commission will or

will not authorize construction and operation of the proposed generation facilities.

The Commission will set the application for a certificate and all other issues for hearing before a hearing examiner. The Commission will direct the Company to give notice so that interested persons and agencies may comment and participate in this proceeding. We will also direct the Commission Staff to investigate the application.

Accordingly, IT IS ORDERED THAT:

(1) As provided by §§ 56-46.1, 56-265.2, 56-580 D, and related provisions of Title 56 of the Code of Virginia, this matter be docketed as Case No. PUE010169 and that all associated papers be filed therein.

(2) The Company's request for a waiver of the Commission's Information Requirements in Support of Petitions for Independent Power Facilities, 20 VAC 5-320-10, be granted.

(3) On or before May 30, 2001, the Company may file with the Clerk any additional testimony and exhibits by which it expects to establish its case.

(4) On or before June 13, 2001, any interested person may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of comments on the Company's request for an interim waiver of the requirements of § 56-234.3 of the Code of Virginia and any request for a hearing on the

issue, and shall serve one (1) copy on counsel to the Company, Stephen H. Watts, II, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. Any request for a hearing should state the specific grounds and describe the evidence that the requesting person intends to introduce at such hearing.

(5) On or before June 18, 2001, the Commission Staff may file with the Clerk an original and fifteen (15) copies of any comments on the request for a waiver and shall serve a copy on the Company and all persons filing comments or a request for a hearing.

(6) On or before June 22, 2001, the Company may file with the Clerk an original and fifteen (15) copies of any response to comments on the Company's request for a waiver, and shall serve a copy on all persons filing comments or a request for a hearing.

(7) A public hearing be held on September 18, 2001, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence on the application.

(8) As provided by § 12.1-31 of the Code of Virginia and the Commission's Rules of Practice and Procedure ("the Rules"), 5 VAC 5-10-520, a hearing examiner be appointed to conduct all

further proceedings in this matter on behalf of the Commission and to file a final report.²

(9) On or before June 22, 2001, any person who expects to participate as a respondent shall file with the Clerk at the address set out in ordering paragraph (3) a notice of participation as a respondent, as required by the Rules, 5 VAC 5-20-80 B, and shall serve a copy on counsel to the Company identified in ordering paragraph (3) and on Commission Staff counsel assigned to the matter, Wayne N. Smith, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197. The respondent shall file and serve the notice of participation as required by the Rules, 5 VAC 5-20-140 and 5 VAC 5-20-150. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by the Rules, 5 VAC 5-20-30.

(10) Within five (5) days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order, a copy of the application, and

² The Commission's Rules of Practice and Procedure, 5 VAC 5-10-10 through 5 VAC 5-10-620, have been revised. Commonwealth of Virginia ex rel: State Corporation Commission Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK000311, Final Order Promulgating State Corporation Commission Rules of Practice and Procedure of April 30, 2001. After June 1, 2001, proceedings before hearing examiners will be governed by 20 VAC 5-20-120, and the revised Rules, 5 VAC 5-20-10 through 5 VAC 5-20-280, will apply to the extent not inconsistent with this Order.

all materials now or hereafter filed with the Commission, unless these materials have already been provided.

(11) On or before July 13, 2001, written comments on the Company's application may be filed with the Clerk at the address set out in ordering paragraph (3). Comments must refer to Case No. PUE010169.

(12) On or before August 10, 2001, each respondent shall file with the Clerk the testimony and exhibits by which it expects to establish its case and shall serve a copy of the testimony and exhibits on counsel to the Company and on all other parties. The respondent shall comply with the Rules, 5 VAC 5-20-140, 5 VAC 5-20-150, and 5 VAC 5-20-240.

(13) The Commission Staff shall investigate the Company's application and, on or before August 24, 2001, shall file with the Clerk the testimony and exhibits it intends to present at the hearing and copies of any workpapers that support the recommendations made in its testimony. Copies of the testimony and exhibits shall be served on all parties.

(14) On or before September 4, 2001, the Company may file with the Clerk all testimony and exhibits that it expects to offer in rebuttal to direct testimony and exhibits of the Commission Staff and respondents and shall serve one copy on all parties. Additional rebuttal evidence may be presented in response to evidence which was not filed, but elicited at the

hearing, provided that the need for the additional rebuttal evidence is timely addressed by motion during the hearing.

(15) The Rules, 5 VAC 5-20-260, Interrogatories to Parties or Requests for Production of Documents and Things, shall be modified for this proceeding as follows: (i) answers and objections shall be served within fourteen (14) days after receipt of interrogatories, counting weekends and holidays; (ii) motions on the validity of any objections raised by answers shall be filed within five (5) working days of receipt of the objection; and (iii) answers, objections, and motions on the validity of objections shall be served by 3:00 p.m. of the due date, unless the Staff or party upon whom service must be made agrees in advance to other arrangements.

(16) Forthwith upon receipt of this Order, the Company shall make available for inspection during regular business hours copies of its application, testimony, exhibits, this Order, and all other materials filed in this proceeding at the Blue Ridge Regional library, 310 East Church Street, Martinsville, Virginia.

(17) On or before June 2, 2001, the Company shall publish twice as display advertising (not classified) in a newspaper or newspapers of general circulation in the City of Martinsville the following notice and a sketch map showing the location of the proposed facilities:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
CINCAP-MARTINSVILLE, LLC
FOR APPROVAL OF GENERATION FACILITIES IN
THE CITY OF MARTINSVILLE
CASE NO. PUE010169

On March 28, 2001, as supplemented on May 10, 2001, CinCap Company, LLC ("CinCap" or "Company"), applied to the State Corporation Commission for a certificate of public convenience and necessity to construct and operate generation facilities in the City of Martinsville. CinCap proposes to build the facilities in the Commerce Court Industrial Park. A description of the location follows:

The CinCap site is on approximately 20 acres in the Commerce Court Industrial Park in the City of Martinsville, located at the southernmost end of Commerce Court and approximately 0.2 mile south of the intersection of Commerce Court with V.C. Drive.

A map showing the approximate location accompanies this notice.

The proposed facilities would consist of four simple-cycle combustion turbines with total net generation capacity of approximately 330 megawatts. The facilities would use natural gas as fuel. The facilities would interconnect with existing transmission facilities of Appalachian Power Company d/b/a American Electric Power.

CinCap identified three options for supplying natural gas to the facility. The first option would require replacement of approximately 21 miles of existing pipeline serving the proposed location of the generating facilities with a larger pipeline that would connect to Transcontinental Gas Pipeline Corporation's existing interstate pipeline. As a second option, Transcontinental Gas Pipeline Corporation would construct a new lateral line from the existing pipeline to the site of the generation facility. Under the third option,

Duke Energy would construct a lateral line from a pipeline it might construct near Martinsville. Only the application for authorization to construct and operate the generation facilities is now before the Commission. Neither CinCap nor any other company has filed with the State Corporation Commission an application for authority to construct a pipeline or lateral, which would serve the proposed generation facilities. The Commission makes no determination of its jurisdiction over any pipeline or lateral line that may be proposed in the future to serve the CinCap facility.

CinCap Company applied for a certificate of public convenience and necessity under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 of the Code of Virginia. In addition to a certificate, CinCap asks the Commission, as provided by § 56-265.2 B of the Code, for exemption from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code. According to the Company, the facility would operate on a merchant plant basis exclusively in the wholesale market for electric power.

CinCap also seeks a waiver of, or exemption from, the requirements of § 56-234.3, Chapter 10 of Title 56 of the Code, which requires Commission approval before an electric utility may make financial commitments or expenditures for new generation facilities of 100 megawatts capacity or larger. In support of this relief, CinCap stated in its application that its project requires expenditures for site preparation and permitting before the Commission will take final action. The Company would undertake these activities at its risk.

The Commission will consider whether a waiver should be granted to the construction approval requirement. We have established procedures for consideration of the waiver. The waiver would be interim pending entry of a final order determining whether the

facility should be exempted from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56. The grant or denial of an interim waiver of the construction approval requirement will indicate or predetermine whether the Commission will or will not authorize construction and operation of the proposed generation facilities.

The application may be inspected in the Commission's Document Control Center, Office of the Clerk of the Commission, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, during Commission business hours. Copies of the application may also be inspected during regular hours at Blue Ridge Regional Library, 310 East Church Street, Martinsville, Virginia.

On or before June 13, 2001, any interested person may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of any comments on the Company's request for a waiver of the requirements of § 56-234.3 of the Code or any request for a hearing on the issue, and shall serve one (1) copy on counsel to the Company, Stephen H. Watts, II, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. Any request for hearing should state the specific grounds for a hearing and the evidence that the requesting person intends to introduce at such hearing. The Commission may act on the request for the interim waiver without further notice.

A public hearing on the application for a certificate of public convenience and necessity for the generation facilities will be held on September 18, 2001, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and evidence on the application. The scheduled hearing on the certificate of public convenience and necessity will be conducted irrespective of

the action the Commission takes on the separate request for an interim waiver of the requirements of § 56-234.3 of the Code.

Any person not participating as a respondent may give oral testimony at the hearing as a public witness. These persons should arrive at the hearing location at least 15 minutes before the start of the hearing and contact the Commission's Bailiff.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

On or before July 13, 2001, written comments on the Company's application shall be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Such comments must refer to Case No. PUE010169.

On or before June 22, 2001, any person who expects to participate as a respondent shall file with the Clerk at the address set out above a notice of participation as a respondent, as required by the Commission's Rules of Practice and Procedure, 5 VAC 5-20-80 B, and shall serve a copy on counsel to the Company, Stephen H. Watts, II, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030, and Commission Staff counsel assigned to the matter, Wayne N. Smith, Office of General Counsel, State Corporation Commission, P.O. Box 1197, P.O. Box 1197, Richmond, Virginia 23218-1197. The respondent shall file and serve the notice of participation as required by the Rules, 5 VAC 5-20-140 and 5 VAC 5-20-150. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by the Rules, 5 VAC 5-20-30. The Commission's Order for Notice and Hearing gives the

complete procedural schedule and instructions on participation in this case.

A copy of the Order for Notice and Hearing may be obtained from the Clerk of the Commission. The text of the order may be viewed at the Commission's website: <http://www.state.va.us/scc/caseinfo/orders.htm> The Rules of Practice and Procedure and other information may also be viewed on the website.

CINCAP-MARTINSVILLE, LLC

(18) On or before May 23, 2001, the Company shall serve a copy of this Order on the mayor of the City of Martinsville, the Secretary of Natural Resources, the Director of the Department of Environmental Quality, and upon the representative of every public service company listed on Attachment A of this Order. Service shall be made by first-class mail or delivery to the customary place of business or residence of the person served.

(19) On or before June 22, 2001, the Company shall file with the Clerk proof of the newspaper publication and proof of service required by ordering paragraphs (17) and (18).